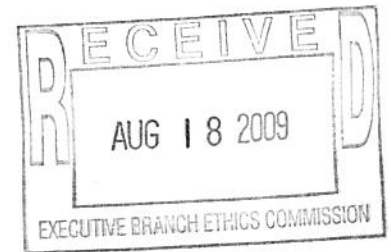


**COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION
AGENCY NO. 08-024
ADMINISTRATIVE ACTION NO. 08-EBEC-0409**



EXECUTIVE BRANCH ETHICS COMMISSION

COMPLAINANT

vs.

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND RECOMMENDED ORDER**

BILLY CARR

RESPONDENT

* * * * *

On April 3, 2009, Hearing Officer Michael Head conducted a hearing in this action at the Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky. Dana Cox Nickles appeared as counsel for the Ethics Branch Ethics Commission ("the Commission"), along with the Commission's representative, John Steffen, Executive Director. Billy Carr, Respondent, appeared by telephone without counsel. Mr. Carr appeared by telephone with the agreement of the Commission's counsel. Mr. Carr was advised of his right to counsel, which he waived. The hearing was recorded by court reporter.

The Commission charges Mr. Carr with failing to file a statutorily required financial disclosure form within the required time frame. Mr. Carr claims he filed his form in January or February of 2008, and that the Commission did not notify him of his delinquency until long after the due date. The issue is the propriety of the Commission's charges against Mr. Carr and the proposed penalty.

The Commission called one witness, William Trigg, staffperson with the Commission. The Respondent called two witnesses, himself and his wife, Mary Carr. The parties submitted a total of ten exhibits, which were all introduced into the record, and which the Hearing Officer

considered in making this decision.

After considering the record as a whole, the Hearing Officer RECOMMENDS that the Commission UPHOLD the charge and proposed penalty against Billy Carr. In support of its decision and based on a preponderance of the evidence, the Hearing Officer issues the following findings of fact, conclusions of law, and recommended order:

FINDINGS OF FACT

1. On November 14, 2008, the Commission issued an Initiating Order, with an Allegation of Violations attached as Appendix A, against Billy Carr alleging that he was an officer as defined in KRS 11A.010(7), and that he failed to file a 2007 Statement of Financial Disclosure form that officers are required to file by February 15 following the end of the reporting calendar year. Hearing Exhibit 7 ("HE 7").
2. For four years, including throughout 2007, until he retired on November 30, 2007, Billy Carr was employed by the Environmental and Public Protection Cabinet as a Division Director II. The Kentucky Personnel Cabinet classifies as an officer Mr. Carr's former position as Division Director II.
3. Mr. Carr did not file a 2007 Statement of Financial Disclosure form with the Commission by April 15, 2008. Mr. Carr filed a 2007 Statement of Financial Disclosure form with the Commission on December 30, 2008. HE 10. Mr. Carr says he mailed the Commission a completed 2007 Statement of Financial Disclosure form in January or February 2008. He did not produce a copy of this filing testifying that he did not keep a copy. He also did not send this alleged mailing by certified mail claiming there was not requirement that he do so.

4. Mr. Carr says he did not receive from the Commission before the due date for the previous year's form, as he had in previous years, the customary reminder packet concerning the Statement of Financial Disclosure form for 2007. Mr. Carr admitted previous years' reminder packets were received in January of the year following the reporting year. The Commission filed proof that Mr. Carr's previous year's form was filed on February, 2007. HE 2.

5. On January 24, 2008, the Commission sent all State officers, including Mr. Carr, a form letter notifying them of the need to file the 2007 Statement of Financial Disclosure form. Mr. Carr's letter was sent to his last known address where he lived while employed by the Environmental and Public Protection Cabinet: 296 Pleasant Pointe, Lexington, Kentucky 40517-4485. Mr. Carr testified he moved to Iowa on January 22, 2008, but that his mail was forwarded to his new Iowa address after that date. Mr. Carr and his wife deny receiving this reminder letter.

6. Mr. Carr admitted he did not notify his former employer, the Commission, or the Kentucky Personnel Cabinet of his new address in Iowa.

7. On June 28, 2008, the Commission sent Mr. Carr an email to his correct email address notifying him of his responsibility to file a Statement of Financial Disclosure form for 2007. Mr. Carr did not respond.

8. On August 28, 2008, the Commission sent Mr. Carr a warning letter, again to his Lexington address. HE 3. Ms. Carr admits she signed for the letter, which was sent return receipt requested. HE 4 and 5. Mr. Carr did not respond.

9. On September 29, 2008, the Commission sent Mr. Carr a letter to his Lexington address informing him that the Commission had voted to initiate this proceeding. HE 6. Mr. Carr did not respond.

10. On November 17, 2008, the Commission sent Mr. Carr a letter, this time to his correct Iowa address, containing a copy of the Initiating Order in this case. HE 7. That letter was returned to the Commission marked unclaimed. HE 8. Mr. Carr says he was out of the country through November 24, 2008, when the U.S. Post Office attempted to deliver this letter. But the U.S. Post Office records show the last attempt was December 9, 2008. HE 9.

11. Mr. Carr contacted the Commission in December 2008 and was told of the need to file the 2007 disclosure form, which he did shortly thereafter. HE 10.

12. The Hearing Officer finds that Mr. Carr is wrong in stating that he filed a statement of financial disclosure in January or February 2008. If he had, there is no explanation for his failure to respond to the numerous notices from the Commission received by him after February 2008 and before the November 2008 notice.

13. The Commission's proposed penalty of a public reprimand and a fine is consistent with the penalties assessed in all cases involving a State officer's failure to file a Statement of Financial Disclosure form.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this action pursuant to KRS Chapter 11A.
2. In accordance with KRS 11A.100, the hearing was conducted pursuant to the provision of KRS Chapter 13B.
3. Under KRS 13B.090(7), the Commission has the burden to prove by a preponderance of the evidence the propriety of the charges against and penalties imposed on the Respondent. Pursuant to KRS 11A.100(3), the Commission must prove its charges by clear and convincing proof. Under KRS 13B.020, the provisions of KRS Chapter 13B shall supersede any

other provisions of the Kentucky Revised Statutes to the extent these other provisions are duplicative or in conflict. Nevertheless, the Commission proved Mr. Carr's violation and its proposed penalty both by a preponderance of the evidence and by clear and convincing proof. Thus, for the reasons that follow, the Commission has met its burden in this action.

4. Pursuant to KRS 11A.100(3), the Board may both publicly reprimand an individual who violates any provision of KRS Chapter 11A and impose a fine up to \$5,000 for each such violation.

5. Under KRS 11A.050(1)(b):

Each officer . . . who does not remain an officer . . . for the entire calendar year shall file the statement [of financial disclosure] for the portion of the calendar year that the person served as an officer The statement shall be filed with the commission within thirty (30) days after the date the person no longer serves as an officer

6. As a major management personnel in the Executive Branch of State government, including Division Directors, under KRS 11A.010(7), Mr. Carr was an officer.

7. Mr. Carr did not remain an officer for the entire 2007 calendar year.

8. Mr. Carr did not file a statement of financial disclosure within thirty days after he retired on November 30, 2007, as required by KRS 11A.050(1)(b).

9. Mr. Carr's excuses are legally insufficient. In years prior to 2007, he worked through the end of calendar year, and, as such, he was not required to file his financial disclosure form until later in the following year rather than thirty days after leaving his position, as KRS 11A.050(1)(b) requires when an officer does not remain an officer for an entire calendar year. Also, the statute does not put the responsibility on the Commission to remind officers to file a

financial disclosure form. Rather the onus is on the officer to file a statement of financial disclosure in the time period required by statute.

10. Nevertheless, the proof showed the Commission tried numerous times to notify Mr. Carr that he had not filed the required disclosure. At the least, Mr. Carr failed to notify the Personnel Cabinet of his change of address. At worst, Mr. Carr ignored numerous notice letters that the Commission sent him.

11. Even if there were proof that Mr. Carr filed his form in January or February 2008, which there is not, this filing would still have occurred after the deadline of December 30, 2007.

RECOMMENDED ORDER

Based on the forgoing Findings of Fact and Conclusions of Law, the Hearing Officer RECOMMENDS that the Executive Branch Ethics Commission issue a final order as follows:

1. Conclude that Billy Carr violated KRS 11A.050(1)(b); and
2. ORDER a PUBLIC REPRIMAND of Mr. Carr; and
3. ORDER a FINE in an amount consistent with the Commission's practice in these cases.

NOTICE TO PARTIES OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4):

a copy of the hearing officer's recommended order shall also be sent to each party in the hearing and each party shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the recommendations with the agency head.

Pursuant to KRS 13B.120(2):

the agency head may accept this recommended order and adopt it as the agency's final order, or it may reject or modify, in whole or in part, the recommended order, or it may remand the matter, in whole or in part, to the hearing officer for further proceedings as appropriate.

Pursuant to KRS 13B.120(4):

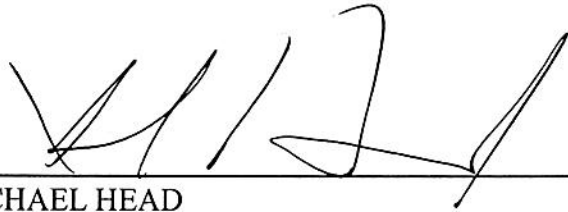
the agency head shall render a final order in an administrative hearing within ninety (90) days after the hearing officer submits a recommended order to the agency head, unless the matter is remanded to the hearing officer for further proceedings.

Pursuant to KRS 13B.140:

All final orders of an agency shall be subject to judicial review in accordance with the provisions of KRS Chapter 13B. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, in a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

Pursuant to KRS 23A.010(4), "Such review [by the Circuit Court] shall not constitute an appeal but an original action." Some courts have interpreted this language to mean that summons must be served when filing an appeal petition in the Circuit Court.

SO RECOMMENDED this 17 day of August, 2009.

A handwritten signature in black ink, appearing to read 'M. Head', is written over a horizontal line.

MICHAEL HEAD
HEARING OFFICER
ADMINISTRATIVE HEARINGS BRANCH
OFFICE OF THE ATTORNEY GENERAL
1024 CAPITAL CENTER DR., STE. 200
FRANKFORT, KENTUCKY 40601-8204
(502) 696-5442
(502) 573-1009 - FAX

CERTIFICATE OF SERVICE

I hereby certify that the original of this RECOMMENDED ORDER was mailed this 17th

day of August, 2009, by messenger mail, to:

DEBBIE BRISCOE
EXECUTIVE ASSISTANT
EXECUTIVE BRANCH ETHICS COMM
#3 FOUNTAIN PLACE
FRANKFORT KY 40601

for filing; and a true copy was sent by first-class mail, postage prepaid, to:

BILLY CARR
830 WOODLAND DR
ROBINS IA 52328

and, by messenger mail, to:

DANA COX NICKLES
GENERAL COUNSEL
EXECUTIVE BRANCH ETHICS COMM
#3 FOUNTAIN PLACE
FRANKFORT KY 40601


DOCKET COORDINATOR

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